Supreme Court, U.S.
FILED

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No. 97-

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In The

Supreme Court of the United States

October Term, 1997

DON RAY PHINNEY,

Petitioner,

vs.

FIRST AMERICAN NATIONAL BANK;
FIRST AMERICAN CORPORATION (TENN.);

Respondents.

Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Don Ray Phinney, Petitioner
Pro se
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January 26, 1998

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QUESTIONS PRESENTED FOR REVIEW

1. Whether or not an attorney for the Respondent can become a Federal Judge, as Thomas A. Wiseman, Jr., did, and then try Respondent's case in the same year while owning stocks and holding a $58,000 loan with the Respondent at the time of trial, making no disclosure pre-trial regarding any of these facts, thus granting a J.N.O.V. motion against the Petitioner after a unanimous jury had found fraud, forgery and perjury against the Respondent and returning a judgment verdict award in the amount of $1.25 million in Petitioner's favor.

2. Whether or not that same Federal Judge, after granting a J.N.O.V. motion in favor of the Respondent, can then continue to use the Federal bench at his disposal to commit fraud, perjury and obstruction of justice and then bribe Circuit Executive James A. Higgins and U.S. Supreme Court Clerk Kathy Tyrcz to cover up these illegal activities and the real merits of the case from the Sixth Circuit and the Supreme Court of the United States.

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CONSTITUTIONAL PROVISIONS

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Don Ray Phinney, does petition for a writ of certiorari to issue to review an opinion of the Sixth Circuit which blocks the Petitioner from exposing the corrupt activities of the Respondents and United States District Court Judge Thomas A. Wiseman, Jr.

The case below involved whether or not United States District Court Judge John G. Davies, in his most recent ruling on August 6, 1993, time-barred Petitioner's case, which Judge Davies' Order did not do. However, United States District Court Judge Robert L. Echols ruled on April 2, 1996, and July 30, 1996, that Judge Davies did in fact time-bar Petitioner's case in his most recent ruling, thus preventing the case from going to trial. The Respondents are responsible for causing the corrupt rulings of Judge Echols.

♦

OPINIONS BELOW

The Order of the Sixth Circuit was rendered on October 29, 1997, and is "Not Recommended for Full-Text Publication", See Appendix D. The Order of the District Court was issued on August 6, 1993. See Appendix 1. The Memorandum and Order of the District Court was issued on April 2, 1996. See Appendix B. The Memorandum opinion and Order of the District Court was issued on May 8, 1997. The Order of the Sixth Circuit was issued on

March 28, 1997. The Memorandum and Order of the District Court was issued on July 30, 1996.

♦

JURISDICTION

The date on which the United States Court of Appeals decided my case was October 29, 1997. The Supreme Court jurisdiction is invoked under 28 U.S.C., § 1254(1).

This petition was filed within (90) days of the opinion appealed from in the Sixth Circuit. No petition for rehearing was filed in the appellate court.

♦

CONSTITUTIONAL PROVISIONS INVOLVED

Fourteenth Amendment, Section One:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States... nor deny to any person within its jurisdiction the equal protection of the laws.

♦

STATEMENT OF THE CASE

This case involves the Petitioner being illegally extradited from Los Angeles, California, to Nashville, Tennessee, by First American National Bank of Nashville, Tennessee. Petitioner had never been arrested before and was found innocent of the charges, which were five bad checks totally $1,050.00. Petitioner filed suit in Los Angeles, California, but the case was transferred to Nashville Federal Court.

Petitioner had previously signed a 7-year guaranteed $18,000,000 contract package deal with Raymond Katz Enterprises, Ltd., that was canceled six months after the signing, thus ruining Petitioner's singing career because of a mistake made by the Respondents.

Raymond Katz Enterprises had obtained an RCA Victor Records multi-album recording contract for Petitioner. Katz and RCA had spent a lot of money over six months making Petitioner's first album to be released worldwide, and Petitioner was unable to promote the album as Katz and RCA ha arranged. Therefore, Petitioner was destroyed from working in the entertainment world forever.

Thereafter, the Respondents bribed Katz not to represent Petitioner but to represent Respondent's country music recording artist instead of representing the Petitioner in rock and roll. In other words, unknowns such as Mac Davis, Dolly Parton and many others became super-stars in the entertainment world instead of Petitioner. Respondents bribed RCA to pull Petitioner's single record release that became a hit

record in the RCA test market while Petitioner was in custody. Respondents obtained the law offices of Bass, Berry & Sims to represent them because RCA Corp. was a client of that law firm.

This case was commenced by the filing and service of a complaint on August 12, 1992, in the U.S. District Court in Los Angeles (No. 92-4823 JGD), under violations of the Racketeer Influenced and Corrupt Organizations ("RICO") Act, embodied in 18 U.S.C., § 1962-1967. Defendants moved to dismiss on the basis of lack of personal jurisdiction, venue, that the complaint was time-barred on its face and that the RICO action was improperly pled. On December 17, 1992, a written order dismissing the case was filed, which Plaintiff moved that court to reconsider. On August 6, 1993, an Order Granting In Part and Denying In Part Plaintiff's Motion for Reconsideration was filed, the court ruling that Plaintiff's suit was not time-barred on its face, but that jurisdiction and venue did not lie in California.

The California suit was dismissed without prejudice and the court instructed Plaintiff to re-file his suit in Tennessee, where Defendants are located. The defendant corporation owns the defendant bank. On August 6, 1993, Judge John G. Davies, in his most recent ruling, stated as follows: Page 3, lines 21 through 23 of Judge Davies' Order of August 6, 1993.

"The statute of limitations for civil RICO claims is four years. Agency Holding Corporation v. Malley-Duff & Assocs., 107 S.Ct. 2759, 2767 (1987).

Page 4, line 18 through line 22.

"The Complaint states that the FBI 'late in 1988 provided Phinney with approximately 40 pieces of new evidence relating to the matters in suit.' Complaint at 10:10-11. If Phinney learned of the fraud then, it would be within four years of filing the complaint."

Page 5, lines 2 through 9

"Conclusion. For the reasons stated above, the Court HEREBY GRANTS IN PART AND DENIES IN PART Plaintiff's motion for reconsideration. The Motion is denied, except that the prior Order to Dismiss the Complaint Under Federal Rules of Civil Procedure 12(b)(2), 12(b)(3), and 12(b)(6) is HEREBY AMENDED to show (1) that the complaint is not time-barred on its face and (2) that the dismissal is without prejudice."

Page 5, lines 25 through 27.

"In their opposition to the motion for reconsideration, Defendants requested that the Court impose sanctions on Phinney and his attorney for filing the motion. Because Phinney brought relevant facts to the Court's attention, sanctions are not warranted."

Plaintiff then filed suit and service on August 3, 1994, in the United States District Court in Nashville, Tennessee (No. 3:94-0639), Judge Echols. Judge Echols ruled on February 27, 1995, that all pre-trial matters, including, but not limited to, entry of a scheduling order and pre-trial order, and the holding of any necessary pre-trial conferences or hearings were referred to Magistrate Judge Juliet Griffin, who

was employed as a law clerk to Judge Thomas A. Wiseman, Jr., from 1978-1980, which was when the Plaintiff won the $1.25 million jury award and Judge Wiseman granted a J.N.O.V. motion for the defendant. [Plaintiff later learned on February 23, 1996, that Judge Echols' wife has two accounts with the defendant and Judge Echols mother-in-law also has two accounts with the defendant.]

On April 28, 1995, Plaintiff filed the RICO Statement per the Court's instructions. On April 28, 1995, Plaintiff also filed a Discovery Statement. On August 31, 1995, Defendant filed for summary judgment and began sending documents to be considered served upon Plaintiff, for 7 months, regular mail to the wrong zip code. Some documents were never received by Plaintiff and some documents took six weeks to get to Plaintiff, which was after the Court had ruled ont the matter. Therefore, on April 2, 1996, the Court granted summary judgment for the Defendant stating that Plaintiff has failed to respond. Judge Echols also ruled on April 2, 1996, that "...the most recent ruling by the California District Court with respect to Plaintiff's claims clearly placed him on notice that his claims were frivolous." Page 11, lines 5 through 7, Appendix B. "...the California District Court in a well-reasoned opinion, stated that Plaintiff's RICO claim was clearly barred by the statute of limitations." Page 11, lines 9 through 11. "It is clear from the complaint that Plaintiff was aware of this claim, at the latest, by May 12, 1989. Thus construing the facts in the light most favorable to Plaintiff, the latest date that the RICO limitations period could have begun

to run was in 1989. As Plaintiff filed this complaint August 3, 1994, over four years later, Plaintiff's claims are clearly barred by the applicable statute of limitations. Accordingly, Defendant's motion for summary judgment is granted." Page 8, lines 7 through 14.

In other words, Plaintiff filed a copy of Judge Davies' Order of August 6, 1993, for Judge Echols to review, but Judge Echols lied in his April 2, 1996, Order about the "most recent ruling", by "the California District Court," which was the August 6, 1993, Order by Judge John G. Davies, in order to cover up the illegal activities of the Defendant and Judge Wiseman. On April 12, 1996, Plaintiff filed a motion to reconsider and for an extension of time regarding the summary judgment because Plaintiff's father died on April 9, 1996, and the Defendant had not properly served Plaintiff any documents for the seven months period regarding the summary judgment motion filed by the Defendant on July 30, 1996. Judge Echols denied the motion. Therefore, Plaintiff appealed that Order and Memorandum to the Sixth Circuit in a timely manner, but the Sixth Circuit remanded the case to the District Court and the District Court vacated the Order and Memorandum of July 30, 1996. Therefore, the final ruling by the Sixth Circuit was October 29, 1997, which is the ruling Petitioner has petitioned this Court to review together with the Judge Davies and Judge Echols rulings.

♦

REASONS FOR GRANTING THE WRIT

First, the main reason is that Petitioner has a right to equal justice under the law. In other words, Judge Davies' ruling on August 6, 1993, and Judge Echols' ruling on April 2, 1996, cannot both be right. Therefore, this Court must decide which judge is correct, because there is no other Court powerful enough to do it and because it is your job and responsibility to do your own housecleaning, if your house is dirty and your Clerk's Office has been bribed by the Respondent in this case. The evidence is located in the book entitled, "Transcripts of Records and File Copies of Briefs, 1984, Vol. 105, Case Nos. 83-2007 to 83-2015." If this Court receives this "Writ of Certiorari", it will know to look in this book, which this Court will find fraud and corruption like never in its history. This Court must be above reproach from any amount of money, power, bribes or any illegal activities of any kind, even in the Clerk's office. The Petitioner is not accusing any Justice at this Court of knowing anything about the illegal activity the Petitioner is about to expose, but this Court needs to take care of the business at hand.

As you can see, if you look at Case No. 83-2008 in the entitled book previously mentioned above, you will discover that there are two cases with the same number, 83-2008. The reason for this act, that is so far departed from the accepted and usual course of judicial proceedings, is because the Respondents bribed U.S. Supreme Court Clerk Kathy Tycrz to switch Case No. 83-2008, Don Ray Phinney vs. First American National Bank, with Case No. 83-2008, Mose Mathis and

Sidney Mathis vs. Luther Heywood. Petitioner was present when Ms. Tyrcz informed Petitioner that she was responsible for delivering the writ of certiorari to the chambers of all nine Justices, but someone took it off her cart and she never delivered the booklets as her job requires. Petitioner asked Ms. Tycrz did she report this corrupt activity to the Court, and Ms. Tycrz replied, "I do not want to get anyone in trouble." Petitioner believes Ms. Tycrz is the corrupt person herself or she would have reported this illegal activity to this Court.

Petitioner demanded to see Case No. 83-2008 in the book entitled above and noticed that under the black line below Case No. 83-2009, you can clearly view Case No. 83-2008. Petitioner noticed that the date of Case No. 83-2009 was May 18, 1984. Petitioner also noticed that Case No. 83-2007 was dated June 6, 1984, and that Case No. 83-2010 was dated June 8, 1984. In other words, the Mose Mathis and Sidney Mathis case was filed 19 days before Case No. 83-2007 and 21 days before Case No. 83-2010. Therefore, this is impossible, so Petitioner had his own phony book made by Kathy Tycrz unless Ms. Tycrz is telling the truth and someone else took it off her cart and they told Ms. Tycrz that they delivered Petitioner's writ of certiorari for her and, if that be the case, then why didn't she report the event and check herself that the Justices law clerks received Petitioner's writ of certiorari.

By a review of Petitioner's Appendices, this Court will understand why the cover-up continues to the present day. The FBI evidence viewed by Judge Davies was too compelling

not to grant Plaintiff's motion for reconsideration.

During Appellant's case involving Judge Wiseman's bribes with Appellee, James A. Higgins was the Circuit Executive for the Judicial Council of the Sixth Circuit. On July 24, 1987, Mr. Higgins withheld the evidence Appellant sent to Mr. Higgins to present to Judge Lively who requested copies of the stocks and loan that were important to prove the year was 1977, not 1971, regarding the $58,000 loan from Appellee to Judge Wiseman. Mr. Higgins also put Appellant's case under the wrong rules so it would appear the Appellant could not appeal to the Judicial Conference of the United States for review.

Furthermore, there should be no difference between two District Courts with conflicting rulings, State Courts or Appeals Courts. Any two Courts with conflicting rulings should be "settled by this Court".

♦

CONCLUSION

In conclusion, Petitioner is certain the Respondent will try and cover up this writ of certiorari just as it did in Case No. 83-2008, Phinney vs. First American, from the view of this Court and that only if the press or media tells this Court about this case will this Court even know Petitioner is here again because Judge Wiseman is still controlling the illegal activities in Nashville Federal Court, Circuit Executive James A. Higgins is still controlling the illegal activities at the Sixth

Circuit Clerk's Office, and U.S. Supreme Court Clerk Kathy Tycrz is still controlling the illegal activities at the Clerk's Office at the Supreme Court of the United States.

Respectfully submitted,

Don Ray Phinney

January 26, 1998

APPENDIX A

ENTERED CLOSED FILED Aug. 6, 1993

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DON RAY PHINNEY, an individual,	) CASE NO. CV 92 4823 JGD
Plaintiff,	)
v.	) ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR RECONSIDERATION
FIRST AMERICAN NATIONAL BANK; FIRST AMERICAN CORPORATION (TENN.); DOES 1-100, INCLUSIVE,	)
Defendants.	)

On May 11, 1993, Plaintiff filed a Motion for Reconsideration of the Court's prior Order to Dismiss the Complaint Under Federal Rules of Civil Procedure 12(B)(2), 12(B)(3), and 12(B)(6). After review of the parties' written submissions, the Court HEREBY GRANTS IN PART and DENIES IN PART Plaintiff's Motion for Reconsideration. The Motion is DENIED, except that the Order is HEREBY Amended to show (1) that the complaint is not time-barred on its face and (2) that the dismissal is without prejudice.

Facts

On August 12, 1992, Plaintiff Don Ray Phinney ("Phinney") filed a complaint against Defendants First

American National Bank ("Bank") and First American Corporation (Tennessee) ("Corporation") for violations of RICO, 18 U.S.C. 1962-67. The Corporation owns the Bank. Phinney, who was pro se until the present motion, now has an attorney. Phinney filed this motion for reconsideration on May 11, 1993.

Phinney's complaint alleges the following facts. In 1968, Phinney lived in Nashville, hoping to become a music star. Phinney dealt with a branch of the Bank. Due to a mixup, Phinney bounced some checks. The Bank decided to prosecute even though Phinney had signed a promissory note for the balance owed on the checks before the checks bounced. Phinney was arrested in California while recording an album and extradited to Tennessee for trial. Phinney's arrest destroyed several career-making opportunities. Phinney was convicted, but his conviction was later overturned.

Phinney sued the Bank in federal district court in Tennessee. The Bank bribed the judge. Thus, although the jury returned a verdict in Phinney's favor, the judge granted a judgment n.o.v. Furthermore, the Bank submitted false documents to the Sixth Circuit, resulting in an affirmance of the trial court's decision. Phinney also alleges that the Bank has done other illegal acts to hinder his appeals, and that the Judge in his Sixth Circuit action lied about his connections with the bank.

Phinney alleges that late in 1988, he received new FBI evidence that prompted him to bring a suit against the bank. On August 12, 1991, Phinney filed a suit in this Court. On

June 8, 1992, the Court dismissed Phinney's suit without prejudice for failure to effect timely service of the summons and complaint.

On August 12, 1992, Phinney filed his suit. Phinney's suit was assigned to Judge Tevrizian. On September 24, 1992, Phinney's suit was reassigned to this Court. On September 21, 1992, Defendants filed a motion to dismiss under 12(b)(2), 12(b)(3) and 12 (b)(6). On October 16, 1992, the parties wrote a stipulation extending Phinney's time to answer the motion while he looked for a lawyer. On November 2, 1992, pro se, Phinney made a very short (6-page) opposition to this motion. The opposition cited just one case in support of Phinney's arguments. On December 22, 1992, this Court entered an Order granting Defendants' motion to dismiss ("Order") for the following reasons:

(a) the Court lacks personal jurisdiction over the Defendant First American Corporation;
(b) venue is improperly laid in the Central District;
(c) Phinney's claims are time-barred; and
(d) Phinney's RICO claims are improperly pled.

Discussion

Phinney has presented no new evidence or arguments which lead the Court to reconsider its findings as to personal jurisdiction, venue, or improper pleading. However, Phinney did alert the Court to facts showing that the complaint is not time-barred on its face.

The statute of limitations for civil RICO claims is four years. Agency Holding Corp. v. Malley-Duff & Assocs., 107

S.Ct. 2759, 2767 (1987). A RICO cause of action accrues when the plaintiff has actual or constructive notice of the injury which is the basis for his action, unless the statute is tolled. Beneficial Standard Life Insurance Co. v. Madariaga, 851 F.2d 271, 274-75 (9th Cir. 1988). "[T]he plaintiff is deemed to have had constructive knowledge if it had enough information to warrant an investigation which, if reasonably diligent, would have led to the discovery of the fraud." Id. at 275.

The complaint was filed August 12, 1992. The Court found in its order that Phinney's claim was time-barred because although the statute of limitations for civil RICO claims is four years, Phinney first learned of the fraud on August 12, 1987, exactly five years before filing his complaint.

Phinney states in his complaint that he "first learned of the pattern of racketeering activity and the injuries [he] sustained therefrom after August 12, 1987." Complaint at 11:12-14. August 12, 1987 is the date of the Order of the Sixth Circuit Judicial Council ("Council's Order."), which Phinney learned about "thereafter." Complaint at 9:23-25. Phinney does not state exactly when after August 12, 1987 he learned of the pattern of racketeering activity and the injuries he sustained, and does not state when he began an investigation. The complaint states that the FBI "late in 1988 provided Phinney with approximately 40 pieces of new evidence relating to the matters in suit." Complaint at 10:10-11. If Phinney learned of the fraud then, it would be within four years of filing the complaint. Because Phinney's complaint does not in fact state

that he first learned of the fraud on August 12, 1987, the complaint is not time-barred on its face.[1]

Conclusions

For the reasons stated above, the Court HEREBY GRANTS IN PART and DENIES IN PART Plaintiff's motion for reconsideration. The Motion is DENIED, except that the prior Order to Dismiss the Complaint Under Federal Rules of Civil Procedure 12(b)(2), 12(b)(3), and 12(b)(6) is HEREBY AMENDED to show (1) that the complaint is not time-barred on its face and (2) that the dismissal is without prejudice.

IT IS SO ORDERED.

Dated: Aug 5 1993

/s/ John G. Davies
JOHN G. DAVIES
United States District Judge

[1] In their opposition to the motion for reconsideration, Defendants requested that the Court impose sanctions on Phinney and his attorney for filing the motion. Because Phinney brought relevant facts to the Court's attention, sanctions are not warranted.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

DON RAY PHINNEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3-94-0639
	)	JUDGE ECHOLS
FIRST AMERICAN NATIONAL BANK, et al.,	)	
	)	
	)	
Defendants.	)	
	)	

ORDER

Presently pending before the Court is Defendants' Motion for Summary Judgment (Docket Entry No. 23), to which Plaintiff has failed to respond. Also pending is Defendants' Motion for Sanctions (Docket Entry No. 19), to which Plaintiff has also failed to respond. In lieu of a response to Defendants' Motions, Plaintiff filed a Motion requesting that the Court grant him an additional extension of time in which to respond to Defendants' Motions. (Docket Entry No. 53) For the reasons discussed in the Memorandum contemporaneously entered herewith, Defendant's Motion for Summary Judgment is GRANTED and Defendant's Motion for Sanctions is GRANTED IN PART and DENIED IN PART. Furthermore,

Plaintiff's Motion for Extension of Time is DENIED. Accordingly, this case is DISMISSED, and Plaintiff is hereby prohibited from filing further lawsuits against Defendants arising from the facts upon which this suit is based without leave of Court.

It is so ORDERED.

/s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DON RAY PHINNEY,	)	
	)	
Plaintiff,	)	No. 3-94-0639
	)	JUDGE ECHOLS
v.	)	
	)	
FIRST AMERICAN NATIONAL BANK, et al.,	)	
	)	
	)	
Defendants.	)	
	)	

MEMORANDUM

Presently pending before the Court is Defendants' Motion for Summary Judgment, to which Plaintiff has failed to respond. Also pending is Defendants' Motion for Sanctions, to which Plaintiff has also failed to respond. In lieu of a response to Defendants' Motions, Plaintiff filed a Motion requesting that the Court grant him an additional extension of time in which to respond to Defendants' Motions. For the reasons discussed herein, Defendant's Motion for Summary Judgment is GRANTED and Defendant's Motion for sanctions is GRANTED IN PART and DENIED IN PART. Furthermore, Plaintiff's Motion for Extension of Time is DENIED.

Plaintiff filed this suit under the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961-1968

("RICO"), seeking to recover damages from Defendants based on allegations that Defendants joined together with the judge presiding over a prior civil suit between Plaintiff and Defendants to form an enterprise with the purpose of depriving Plaintiff of a fair and just trial. Defendants filed a Motion for Summary Judgment contending that Plaintiff's allegations do not have evidentiary support and are not likely to have such support after a reasonable opportunity for further investigation or discovery. Defendants also filed a Motion for Sanctions requesting that the Court require the payment of Defendants' reasonable attorneys' fees incurred as a direct result of this lawsuit, and further, prohibit Plaintiff from filing any further lawsuits against Defendants without leave of the Court to file such suits.

In ruling on a motion for summary judgment, this Court must construe the evidence produced in the light most favorable to the non-moving party, drawing all justifiable inferences in his or her favor. See Anderson v Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). A party may obtain summary judgment if the evidentiary material on file shows "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of satisfying the court that the standards of Rule 56 have been met. See Martin v. Kelley, 803 F.2d 236, 239 n.4 (6th Cir. 1986). The ultimate question to be addressed is whether there exists any genuine issue of material fact which is disputed. See Anderson v. Liberty Lobby, Inc., 477 U.S. at 248. If so,

summary judgment dismissal is inappropriate.

On January 18, 1968, a jury impaneled in the Criminal Court of Davidson County, Tennessee found Plaintiff guilty of passing a worthless check in the amount of $250.00 and recommended a sentence of eleven months and 29 days in the Davidson County Workhouse. Plaintiff's conviction was subsequently reversed by the Tennessee Criminal Court of Appeals because the statue upon which the indictment was based had been repealed. The decision by the Criminal Court of Appeals was affirmed by the Tennessee Supreme Court and Plaintiff was not reindicted on the charges.

On September 3, 1971, Plaintiff filed a civil action against Defendant in the United States District Court for the Central District of California ("California District Court") for false imprisonment, assault and battery, abuse of process, libel and slander, conspiracy to deprive Plaintiff of civil rights, and malicious prosecution. The California District Court dismissed the complaint for lack of jurisdiction and then, upon Plaintiff's motion to reconsider, vacated its order and transferred the action to the United States District Court for the Middle District of Tennessee ("Middle District of Tennessee"). On May 2, 1973, the Middle District of Tennessee dismissed the action without prejudice for failure to prosecute. On April 22, 1974, Plaintiff refiled his cause of action in the United States District Court for the Western District of Tennessee. On June 28, 1974, after Defendants filed a motion to dismiss for improper venue, the case was transferred to the Middle District of Tennessee.

On October 24, 25, and 26, 1978, a jury trial was held on Plaintiff's claim, which by this time, had been narrowed to claims of malicious prosecution and outrageous conduct. The jury returned a verdict in favor of Plaintiff on both counts and awarded Plaintiff damages of $999.99 in compensatory damages, and $250,000 in punitive damages. On June 1, 1978, Judge Wiseman entered an order granting Defendants' motion for judgment notwithstanding the verdict, which was then affirmed by the Sixth Circuit Court of Appeals on May 18, 1981.

Plaintiff then filed a motion to vacate the judgment notwithstanding the verdict ("J.N.O.V.") in the Middle District of Tennessee contending that Judge Wiseman should have recused himself because of his prior association with Defendants, and that failure to recuse warranted relief from the operation of the judgment against him. The court found that Judge Wiseman's association with Defendants did not warrant mandatory disqualification, and further found that Plaintiff's post-judgment challenge to Judge Wiseman's impartiality "lacks substantial merit and, in some respects, borders on the frivolous." Plaintiff filed a motion to reconsider and, subsequently, an appeal of the decision to the Sixth Circuit, both of which were denied.

Plaintiff then filed a complaint of judicial misconduct with the Judicial Council of the Sixth Circuit ("Council") alleging that Judge Wiseman owned stock in Defendant bank, the judge was indebted to Defendant, and that the judge received cash payments from Defendant while the civil case

was pending. In an order dated August 12, 1987, the Council dismissed the complaint and stated that "[i]t is clear from an examination of the information submitted by the complainant as well as the response of the judge that the allegations are frivolous and that the complaint is subject to dismissal.

On August 12, 1991, Plaintiff filed a complaint in the California District Court claiming Defendants violated RICO by bribing Judge Wiseman to enter the order of J.N.O.V. in the prior civil proceeding, submitting perjurious documents to the Sixth Circuit,[1] and committing mail fraud. The District Court granted Defendants' Motion to Dismiss based on Plaintiff's failure to effect timely service of the summons and complaint.

On August 12, 1992, Plaintiff refiled his complaint in the California District Court. The court granted Defendants' motion and dismissed the case because it did not have personal jurisdiction over the case. Although the court found that it did not have personal jurisdiction over Defendants, it nevertheless concluded that: 1) venue was improperly laid in the Central District of California, 2) Plaintiff's RICO claims are barred by the applicable statute of limitations, 3) Plaintiff failed to allege facts to meet the specificity requirement of

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[1]Plaintiff alleges that Defendants induced Judge Wiseman to lie about the proceedings at which the judge disclosed the extent of his relationship with Defendants. In particular, Plaintiff asserts that Judge Wiseman's representation to the Sixth Circuit that he had disclosed the nature of his

relationship was false. According to the official transcript of the proceedings that occurred during the trial in October, 1978, however, the following exchange occurred between Judge Wiseman and the attorneys for Plaintiff and Defendants:

THE COURT:

Gentlemen, I brought up a matter yesterday in chambers which perhaps we should get on the record, in which I stated to all counsel that as a lawyer prior to my assuming the bench, I at one time represented the defendant First American National Bank in this cause, and at another time prior to 1971, I represented what at that time was an independent bank, First National Bank of Tullahoma, for a brief period of time, which now has subsequently, I think 1973 or '74, become part of the First Amtenn System.

I further advised counsel that I do my personal banking business with First National Bank of Tullahoma, and have for thirty years, and it is now a part of the First American system.

I advised all of you of these facts in order to give you an opportunity to file a motion to recuse myself. I stated to you then and state to you now, none of those matters are of such a nature that the Court feels judgment will be clouded in any manner in the trial of this case. Since no such motion has been filed, I assume that you made your respective clients aware of that and have no objection thereto.

Is that correct, Mr. Aden?

MR. ADEN:

Yes, sir. That is unless Mr. Phinney corrects me, that is correct.

THE COURT:

And Mr. Walker?

MR. WALKER:

That's correct for the defendant.

Federal Rule of Civil Procedure 9(b), 4) Plaintiff failed to allege acts sufficient to constitute racketeering activity, 5) Plaintiff failed to sufficiently allege a RICO enterprise distinct from Defendants.

On August 3, 1994, Plaintiff filed this action in this Court alleging that he is entitled to relief, under RICO because Defendants formed an enterprise with Judge Wiseman. Plaintiff alleges that 1) Defendants conspired and agreed to bribe Judge Wiseman through cash payments, stock payments, forgiveness of debt in exchange for the judgment not withstanding the verdict entered in the prior civil trial, 2) Defendants submitted papers to the United States Court of Appeals for the Sixth Circuit which were fabricated, 3) Defendants coerced the judge into lying to the Judicial Council of the Sixth Circuit, and 4) Defendants committed mail fraud by mailing falsified legal papers to the Sixth Circuit.

As an initial matter, Local Rule 8(b)(3) provides that "[f]ailure to file a response shall indicate that there is no opposition to the motion." Defendant filed this Motion for Summary Judgment on August 31, 1995. Plaintiff has failed to respond to Defendant's Motion. The Court finds that Plaintiff's failure to respond alone warrants granting of Defendants' Motion for Summary Judgment and dismissal of this action.

Even assuming Plaintiff filed a response, this case should be dismissed because Plaintiff's claims are barred under the statute of limitations. The statute of limitations for civil

claims filed under RICO is four years. Agency Holding Corp. v. Malley-Duff & Assoc., Inc., 483 U.S. 143, 156 (1987). Under federal law, the statute of limitations begins to run when the plaintiff knows or has reason to know of the injury upon which the action is based. McCune v. City of Grand Rapids, 842 F.2d 903, 905 (6th Cir. 1988). The factual basis for Plaintiff's claim arose when Defendants allegedly formed an enterprise with Judge Wiseman during the 1978 civil trial between Plaintiff and Defendants. Plaintiff further alleges certain improprieties with respect to his subsequent appeal to the Court of Appeals for the Sixth Circuit in which that Court dismissed Plaintiff's claim in 1981. Considering the protracted litigation that has resulted from the events that occurred in 1978 and in 1981, the Court is of the opinion that Plaintiff had constructive knowledge of the facts which gave rise to his claims many years before filing this suit. Furthermore, even if the Court assumes the Plaintiff did not know of Defendants' alleged improprieties at the time of their occurrence, it is clear that he was well aware of these facts when he filed a complaint with the Judicial Council sometime prior to August, 1987.[2] Furthermore, even though one of Plaintiff's claims arises out of the 1987 Judicial Council proceedings, namely

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[2] As the Judicial Council rendered its order on August 12, 1987, Plaintiff presumably filed his complaint prior to that date.

Plaintiff's allegation that Defendants coerced Judge Wiseman into lying to the Judicial Council in order to conceal prior improprieties, it is clear from the Complaint that Plaintiff was aware of this claim, at the latest, by May 12, 1989.[3] Thus, construing the facts in the light most favorable to Plaintiff, the latest date that the RICO limitations period could have begun to run is in 1989. As Plaintiff filed this Complaint on August 3, 1994, over four years later, Plaintiff's claims are clearly barred by the applicable statute of limitations. Accordingly, Defendants' Motion for Summary Judgment is GRANTED.

Defendants have also requested that the Court impose sanctions on Plaintiff under Rule 11. The determination of an appropriate sanction is within the discretion of the Court. Mann v. G & G Mfg., Inc., 900 F.2d 953, 958 (6th Cir. 1990), cert. denied, Sloan v. G & G Mfg. Inc., 498 U.S. 959 (1990). The principal goal of Rule 11 is deterrence of certain conduct, and therefore, the Court should impose the least severe sanction that is likely to deter the conduct at issue. Jackson v. Law Firm of O'Hara, Ruberg, Osborne and Taylor, 875 F.2d 1224, 1229 (6th Cir. 1989). The severity of the sanction, however, may vary according to the severity of the misconduct. Mihalik v. Pro Arts, Inc., 851 F.2d 790, 792-93 (6th Cir. 1988). Costs and attorneys' fees are often imposed as sanctions for Rule 11 violations, and sometimes double costs and double attorneys' fees are warranted when the misconduct at issue is mendacious. See Combs v. Rockwell Intern. Corp., 927 F.2d 486, 489 (9th Cir. 1991), cert. denied, 502 U.S. 859 (1991) (assessing double costs and attorneys' fees as sanctions

for filing a frivolous appeal); Thomas v. United States, 671 F. Supp. 15, (E.D. Wis. 1987) (assessing attorneys' fees and costs for one defendant and double costs for other defendant as a Rule 11 sanction for filing a frivolous claim).

Many courts have granted sanctions against plaintiffs for pursuing different claims regarding the same legal issues or claims contrary to well-established law and not supported by a colorable argument for a change in the law. See Cook v. Spillman, 806 F.2d 948 (9th Cir. 1986) (sanctioning pro se plaintiff challenging tax laws); Coleman v. C.I.R., 791 F.2d 68 (7th Cir. 1986). The only purpose of these suits is to "clog the court's dockets, waste judicial time and cause protracted delay in worthy litigation." Cook, 806 F.2d at 948.

In the present case, Defendants allege that Plaintiff has repeatedly filed frivolous lawsuits with the intent to harass and has requested that the Court impose sanctions pursuant to Rule 11. On June 1, 1978, Judge Wiseman entered an order granting Defendants' motion for J.N.O.V. effectively nullifying the $250,999.00 jury award. Such a turn of events would understandably upset even the staunchest of litigants. However, almost twenty years and several lawsuits later, the issues that arose as a result of Judge Wiseman's order granting

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[3] In his Complaint, Plaintiff alleges that, on May 12, 1989, he received information from the Federal Bureau of Investigation which allegedly demonstrate that Judge Wiseman lied to the Judicial Council. See Complaint, ¶18.

J.N.O.V. continue to be litigated. Although Plaintiff has characterized his numerous claims in a variety of manners, the gravamen of his complaint has remained unchanged: the J.N.O.V. entered in 1978 was fraudulently and illegally obtained as a result of Defendants' allegedly nefarious relationship with Judge Wiseman.[4] This claim has been raised in some form in numerous proceedings and, without exception, has been dismissed.[5]

The Court recognizes that Plaintiff is a pro se litigant and, as such, may be less adept in determining whether a particular claim is frivolous. However, not only has Plaintiff gained experience through his involvement with this litigation which arose out of the same facts for almost two decades, the most recent ruling by the California District Court with respect to Plaintiff's claims clearly placed him on notice that his claims are frivolous. After concluding that it lacked personal jurisdiction over Defendants, the California District Court, in a well-reasoned opinion, stated that Plaintiff's RICO claim

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[4] The Court notes that, the precise portrayal of this relationship has changed from a mere conflict of interest which warranted recusal to allegations that Defendants bribed Judge Wiseman to the most recent allegations, that the relationship constitutes an criminal enterprise under RICO. Plaintiff has even added allegations that Defendants and Judge Wiseman have attempted to conceal these alleged wrongdoings. The Court, however, is of the opinion that the basic allegation upon which Plaintiff seeks relief remains the same.

[5] Plaintiff has raised the issue of the propriety of the relationship between Defendants and Judge Wiseman as follows:

1. Middle District of Tennessee: motion to vacate the J.N.O.V. based on allegations that Judge Wiseman should have recused himself because of his prior association with Defendants;

2. Middle District of Tennessee: motion to reconsider the denial of his motion to vacate;

3. Court of Appeals for the Sixth Circuit: appeal of the decision of his motion to vacate;

4. Judicial Council of the Sixth Circuit: a complaint of judicial misconduct against Judge Wiseman pertaining to his relationship with Defendants which was dismissed as frivolous.

5. California District Court: complaint that Defendants violated RICO by bribing Judge Wiseman to enter the Order of J.N.O.V. in the prior civil proceeding, submitting perjurious documents to the Sixth Circuit, and committing mail fraud dismissed based on Plaintiff's failure to effect timely service of the summons and complaint;

6. California District Court: identical complaint that Defendants violated RICO which was dismissed for lack of personal jurisdiction and for other reasons including the court's conclusion that Plaintiff's RICO claims are barred by the applicable statute of limitations.

7. Middle District of Tennessee: the current complaint alleging RICO violations.

was clearly barred by the statute of limitations. Nevertheless, Plaintiff chose to refile a virtually identical complaint with this Court almost two years after the dismissal of the California claim. Furthermore, the California District Court found that Plaintiff failed to plead with sufficient specificity, failed to allege facts sufficient to support a pattern of racketeering under RICO, and failed to allege facts to support a RICO enterprise.[6] It is clear that, following the California District Court's ruling, Plaintiff should be well aware that his claim lacks merit, and, as such, that any further lawsuits based on the same facts would be considered frivolous.

After thoroughly reviewing the record and submissions of the parties, any future suits filed by Plaintiff involving similar claims will be regarded as frivolous and thus sanctionable. Accordingly, in the interests of protecting the courts from needless litigation, and in the interests of protecting Defendants from the expenses of defending against frivolous lawsuits, Plaintiff is hereby prohibited from filing any lawsuits against Defendants that are based on these facts without leave of this Court. Finally, although the Court is of the opinion that monetary sanctions are not necessary to deter Plaintiff's conduct at this time, see Jackson, 875 F.2d at 1229 (holding that the court should impose the least severe sanction that is likely to deter the conduct at issue), the Court cautions Plaintiff, that, should he choose to file another lawsuit based upon these facts, the Court will not hesitate in imposing monetary sanctions.

For the foregoing reasons, Defendant's Motion for

Summary Judgment is hereby GRANTED and Defendant's Motion for Sanctions is GRANTED IN PART and DENIED IN PART. Accordingly, this case is DISMISSED, and Plaintiff is hereby prohibited from filing further lawsuits against Defendants arising from the facts upon which this suit is based without leave of Court.

/s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

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[6] **The Court notes that, although the California District Court's discussion of the merits of Plaintiff's claims clearly notified him that his claims lacked merit, the conclusions of that court do not have res judicata effect on this Court because the case was dismissed for lack of personal jurisdiction. Cf. Ohio State Pharmaceutical Assoc. v. Creasy, 587 F. Supp. 698, 704 (S.D. Ohio 1984) (holding no res judicata effect where the prior court did not decide the case on its merits).**

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

- - -

HONORABLE JOHN G. DAVIES, JUDGE PRESIDING

- - -

DON RAY PHINNEY,	)	
	)	
Plaintiff(s)	)	No. CV-92-4823 JGD(Ex)
	)	
v.	)	
	)	
FIRST AMERICAN	)	
NATIONAL BANK, et al.,	)	
	)	
Defendant(s)	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, August 2, 1993

BEVERLY A. CASARES CSR #8630
Official Court Reporter
312 North Spring Street
Room 440
Los Angeles, California 90012
(213) 617-2305

APPEARANCES:

FOR PLAINTIFF(S) ROBERT RENTZER:
5445 Balboa Dr.
Suite 113
Encino, California 91316

FOR DEFENDANT(S) THOMAS KASTER

LOS ANGELES, CALIFORNIA; MONDAY, AUGUST 2, 1993

THE CLERK: Next item on calendar, number 7, case Don Ray Phinney versus First American National Bank.

MR. AUSTRA: Good afternoon, Peter Austra for First American National Bank and the Corporation.

MR. KASTER: Good afternoon, Thomas Kaster and Richard Morse from the Beli Office on behalf of Plaintiff.

Good afternoon co-counsel Robert Rentzer and Mr. Rentzer however I will not be addressing the Court. We're not trying to gang up on counsel. Robert Keenan is with me also.

THE COURT: All right. Have read the tentative.

MR. RENTZER: Yes, your Honor.

THE COURT: I have ordered that some allegations to my prior order, the motion for reconsideration is partially successful. Any argument from either side?

MR. KASTER: Your Honor, I'd like -- the statue of limitations -- and the Court, as I understood the basis for the Court's prior ruling, it was that whatever it was that the plaintiff derived from the 1987 Sixth Circuit order was something that the plaintiff -- is constructive knowledge as of August 1987 and, therefore, the August 1992 filing was not timely. And the only thing that the plaintiff said in opposition to that was that that was a question for the jury. The issue of constructive knowledge, which is not correct, that's a question of law, and it's for the Court, and I think the Court properly--

THE COURT: If the facts are clear it is a matter of law absolutely. There was a complaint filed, written, and filed

by a gentleman who's not a lawyer, and upon reconsideration the allegations in the complaint, I felt I was wrong initially in closing that door.

MR. KASTER: It's a matter of proof, I saw that.

Your Honor, I think that in the tentative ruling the Court cites two things: One, the reference -- and I'm referring to page 4 of the tentative ruling -- the Court refers to allegations relating to the knowledge of that 1987 ruling. And now looking at page 4 of the Court's tentative ruling at lines 18 and 19, the Court states quote: He began an investigation as early as -- and then quote, which I believe the Court is quoting from the Complaint, late in 1988." Closed quote. And then the Court cites the Complaint at page 10, paragraph 10 with all due respect, your Honor, there's been some miscitation there, because there is no such allegation in the Complaint. And I could understand that that would be if the Court felt that that was something that the -- that had been alleged that that might cause confusion here, but I don't find that in the -- in the Complaint, and I looked for it. And I did it in the courtroom, but that particular --

THE COURT: All right. I will take note of that, counsel, and I will double-check it.

MR. KASTER: Then dealing with the -- is that a correct citation to the complaint?

MR. RENTZER: Your Honor, I believe the Court cites page 10. I'm sorry the Court cited --

THE COURT: That means page 10, line 10. Is that a mistake?

MR. KASTER: What it says, your Honor, it starts with line 11. Plaintiff sought out the help of the FBI, said agency provided Phinney with approximately 40 pieces of new evidence relating to the matters ensued. Line 14 may have been 1989, the Department of Justice provided Phinney with approximately 34 pieces of new evidence.

MR. RENTZER: Those are accurate statements in the Complaint. But those do not state that the plaintiff began a -- an investigation in 1988. And in fact after the plaintiff, in their Complaint, talks about the -- what he learned in 1987. That's immediately followed by the allegations in paragraph 30, which proceeds what counsel just read saying that the aforementioned acts constituted violations of 18 U.S.C., sections 224 and 15023 concerning bribery and obstruction of justice. And that is what appears at page 10, line 10 or concludes at page 10, line 10.

THE COURT: All right.

MR. KASTER: Just moving to the other subject I want to touch on briefly.

The Court has now said that it is considering granting the motion to dismiss without prejudice. And as I understand it, the Court has already found that this Court has no jurisdiction that venue is improper here. And that there's been no cause of action stated, apart for several reasons. And I think that the order should make clear granted without prejudice does not mean that the plaintiff can file again in this court file these allegations in this court, because I think there will be confusion about what the meaning of not without

prejudice is, but this case is dismissed if I understand the plaintiff's remedy is to go to the court where there is jurisdiction and proper venue, not this court.

THE COURT: The intent of this motion, this ruling is simply to revive the case sufficiently to allow the plaintiff to get to the right court and file a complaint in the right court.

MR. KASTER: If there is one.

THE COURT: It's under submission.

MR. KASTER: Thank you, your Honor.

THE COURT: Thank you.

MR. RENTZER: Just briefly, your Honor. We submit to the Court's ruling on the statute of limitations. We would ask for the ruling that the statute of limitations is tolled by the filing of the August 1992 complaint so that when plaintiff refiles in the proper jurisdiction there is not a renewed motion to dismiss.

THE COURT: Oh, I don't have to rule on that. That would be the case, would it not anyway, as a matter of law?

MR. RENTZER: Okay, your Honor. I just had a couple of points about jurisdiction. I believe we disagree with the Court's tentative on jurisdiction and the venue. The plaintiff has made a prime facie showing of personal jurisdiction.

THE COURT: I found to the contrary, counsel. I can't see that the First American -- First American National Bank, First American Corporation is doing business in California. The contacts are very, very, very tenuous.

MR. RENTZER: Your Honor, I believe under case

law the plaintiff at this stage of the proceedings which is before an answer is even filed, he should be allowed to do some discovery.

THE COURT: He's provided ample evidence to support the jurisdiction and the venue.

MR. RENTZER: Okay. Another point briefly on the statute of limitations, your Honor. Even assuming arguendo that plaintiff had some knowledge, that is not the same as having sufficient knowledge to learn about a RICO-type injury. And I would just like to say briefly, your Honor, regarding the defendant's request for sanctions, all they -- your Honor denied that request of $5700 in sanctions. I'd like to point out that plaintiff feels that was a frivolous request for sanctions, and under the Ninth Circuit case of Parding (ph.) 1989 case, the Ninth Circuit held that frivolously requesting sanctions is -- it is subject to sanctions. And I'd like to quote the language of the chief judge.

THE COURT: Is this a part of your opposition? Did you request sanctions --

MR. RENTZER: No, your Honor.

THE COURT: -- The frivolous question of sanctions?

MR. RENTZER: No, your Honor.

THE COURT: So, you're -- that's about what you're to do is request sanctions for the frivolous request of sanctions.

MR. RENTZER: Your Honor, I just want to point out that it is frivolous.

THE COURT: But that isn't a remedy you sought in your writings?

MR. RENTZER: No, your Honor.

THE COURT: So, this is my first notice of it. So, wouldn't you say that your request for sanctions, because of the frivolous request of sanctions is, in fact, frivolous?

MR. RENTZER: Your Honor, I would just point out that the request made by the defendants after your Honor clearly pointed out in the December 14, 1992 hearing, invited plaintiff to move to reconsider. The Court, incumbent upon any new counsel reading a copy of the transcript of that hearing, they would have seen that your Honor did invite the plaintiff to obtain counsel as expeditiously as possible, and asked the Court to reconsider its order. And upon that basis I believe the request was frivolous, your Honor.

Thank you.

THE COURT: All right. I thank you. It's under submission.

MR. KASTER: Thank you, your Honor.

(Proceedings concluded.)

CERTIFICATE

I hereby certify that the foregoing matter entitled DON RAY PHINNEY versus FIRST AMERICAN NATIONAL BANK, ET AL No. CR-92-686-JGD is transcribed from the stenographic notes taken by me and is a true and accurate transcription of the same.

/s/ Beverly A. Casares 9/18/96

BEVERLY A. CASARES CSR#8630 DATED:

Official Court Reporter

APPENDIX D

No. 97-5870

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DON RAY PHINNEY,	)	
	)	
Plaintiff-Appellant,	)	ORDER
	)	
v.	)	
	)	
FIRST AMERICAN NATIONAL BANK; FIRST AMERICAN CORPORATION (TENN.); DOES 1-100, INCLUSIVE,	)	
	)	
Defendants-Appellees.	)	

(Not recommended for full-text publication)

Before: KEITH, BOGGS, and NORRIS, Circuit Judges.

This matter is before the court upon consideration of the Don Ray Phinney's response to this court's order directing him to show cause why his appeal should not be dismissed for lack of jurisdiction on the basis of a late notice of appeal. Phinney responded stating that he has a 60 day appeal period because United States District Court Judge Wiseman was intended to be one of the John Does in the case as evidenced by the RICO Statement.

It appears from the documents before the court that the appellant filed a complaint on August 3, 1994 in the district

court naming the parties listed in the caption of this order. Service of the complaint was made upon First American National Bank and First American Corporation. Judge Wiseman was not named as a party in the caption of the complaint as required by Fed. R. Civ. P. 10(a). Although the RICO Statement filed on April 28, 1995 mentions actions of Judge Wiseman in a previous district case, no amended complaint was filed adding Judge Wiseman as a party. Judge Wiseman was not named
as a defendant in the action and Phinney is not entitled to a 60 day appeal period. *See* Fed. R. App. P. 4(a)(1).

Phinney appealed on July 3, 1997 from the order entered on May 8, 1997 denying an extension of time and vacating a ruling on a late motion to reconsider. The notice of appeal was filed 24 days late. *See* Fed. R. App. P. 4(a) and 26(a).

The failure of appellant to timely file a notice of appeal deprives an appellate court of jurisdiction. Compliance with Fed. R. App. P. 4(a) is a mandatory and jurisdictional prerequisite which this court can neither waive nor extend. *Baker v. Raulie*, 879 F.2d 1396, 1398 (6th Cir. 1989) (per curiam). Fed R. App. P. 26(b) specifically provides that this court cannot enlarge the time for filing a notice of appeal.

Accordingly, it is ordered that the appeal is dismissed for lack of jurisdiction.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green

Clerk